

REMARKS

This amendment is being filed prior to payment of the issue fee. Entry of the foregoing amendment is respectfully requested. The amendment is required to correct and clarify the recitation of the priority claim in the specification.

In the specification, paragraph below the heading “CROSS-REFERENCE TO RELATED APPLICATIONS” has been amended.

1. *In a supplemental Notice of Allowance mailed on October 14, 2009, the Examiner acknowledged the Applicant’s claim for priority “based on an application filed in the Netherlands on 23 September 2002” and stated that the “PCT/NL02/00614 Patent Application is listed as a 371, but there is no PCT-903 form present”.*

The priority application filed in the Netherlands on 23 September 2002 was a PCT application (International Application No. PCT/NL02/00614). The present application was filed as a continuation of the PCT application, not as a national phase application of the PCT application. Accordingly, a PCT-903 form is not required because this is not a national phase application (see MPEP 1893.03(a)).

After the present application was filed, the specification was incorrectly amended to indicate that it was a national phase application of the PCT application rather than a continuation of the PCT application. This amendment to the specification corrects this prior amendment and clarifies that the present application is a continuation (not a national phase) application. On October 27, 2009, the undersigned representative contacted the Examiner and the Application Assistance Unit to confirm that this method of amendment to the specification was acceptable. Both the Examiner and the Application Assistance Unit agreed that this amendment was acceptable to clarify the priority status.

2. *In the October 14 supplemental Notice of Allowance, the Examiner also noted “that applicant has not filed a certified copy of the PCT application as required by 35 U.S.C. 119(b)”*

A certified copy of the PCT application is not required. This application was filed as a continuation application of the PCT application, not as a national phase application of the PCT application. The statutory bases for such a continuation of a PCT application is found in 35 U.S.C. §§ 363, 365(c), and 120. Such a continuation is not required to meet the requirements of 35 U.S.C. § 119(b).

More particularly, 35 U.S.C. §363 provides that an international application designating the United States (such as the Netherlands PCT application in this case) has the effect of a national application regularly filed in the USPTO except as provided under §102(e). 35 U.S.C. §365(c) provides, in part, that in accordance with the conditions and requirements of §120, a national application shall be entitled to the benefit of the filing date of a prior international application designating the United States (again, the Netherlands PCT application in this case). 35 U.S.C. §120 sets forth the requirements for obtaining the benefit of an application previously filed in the United States, or for obtaining the benefit of a PCT application designating the United States under 35 U.S.C. §363. Accordingly, to obtain the benefit of the PCT filing date under 35 U.S.C. §365(c) and §120, a certified copy of the PCT application is NOT a requirement.

3. *In the October 14 supplemental Notice of Allowance, the Examiner also identified a typographical error in the specification relating to the filing date of the priority Dutch application.*

The amendment to the specification submitted herewith corrects this typographical error.

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It is believed that no fees are due in connection with this Rule 312 amendment. In the event this is not correct, the undersigned authorizes the Commissioner to charge Deposit Account No. 19-0741.

Respectfully submitted,

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